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IN THE  
**Supreme Court of the United States**

JUNE TERM 1948

CLARA SHAPIRO

Petitioner,

v.

ANNETTE SHAPIRO and UNITED STATES OF AMERICA,  
Respondents.

ON PETITION FOR CERTIORARI TO CIRCUIT COURT OF APPEALS  
FOR THE SECOND CIRCUIT

**PETITION FOR WRIT OF CERTIORARI AND  
BRIEF IN SUPPORT THEREOF.**

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## SUBJECT INDEX

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### PAGE

Petition for Writ of Certiorari .....	1-7
I—Summary statement of matter involved .....	1
II—Award of Veterans' Administration .....	2
III—The evidence .....	4
IV—Decision of Trial Court .....	5
V—Decision of Circuit Court of Appeals .....	5
VI—Jurisdiction of this Court to review the judgment .....	5
VII—The question presented .....	6
VIII—Reasons relied on for allowance of the Writ ..	6
IX—Record .....	7
X—Prayer .....	7
 Brief in support of petition for Certiorari .....	 9-15
I—The Opinion of the Court below .....	9
II—Jurisdiction .....	9
III—Statement of the case .....	9
IV—Reasons relied on for allowance of Writ .....	9
V—Statutes and Regulations .....	10
VI—Argument .....	11
VII—Conclusion .....	15

## CASES CITED

	PAGE
Bradley v. U. S., 143 F. (2d) 573, certiorari denied 331 U. S. 793 .....	7, 13, 14
Brown v. Union Central Life Ins. Co., Tex. Civ. App. 72 S. W. 2d 661 .....	11
In re Burton's Estate, 116 Pa. Super. 249, 176 A. 819..	11
Chichiarellie v. United States, D. C., 26 F. 2d 484 ....	14
Claffy v. Forbes, D. C., 280 F. 233 .....	14
Collins v. United States, 161 F. 2d 64, cert. den. 331 U. S. 859 .....	14
Farley v. United States, D. C., 291 F. 238 .....	14
Gifford v. United States, D. C., 289 F. 833 .....	14
Johnson v. White, 8 Cir. 39 F. 2d 793 .....	14
Kaschefskey v. Kaschefskey, 6 Cir. 110 F. 2d 836 ....	14
Kingston v. Hines, D. C., 13 F. 2d 406 .....	14
Kochanek v. Prudential Ins. Co. of America, 262 Mass. 174, 159 N. E. 520 .....	11
Layne v. United States, 7 Cir., 3 F. 2d 431 .....	14
Leahy v. United States, 9 Cir., 15 F. 2d 949 .....	11, 14
Peart v. Chaze, D. C., 13 F. 2d 908 .....	14
Ramsy v. United State, 72 F. Supp. 613 .....	14
Roberts v. United States, C. C. A. 4th Cir., 157 F. 2d 906, 909 .....	13
Zolintakis v. Orfamos, 10 Cir., 119 F. 2d 571 .....	11

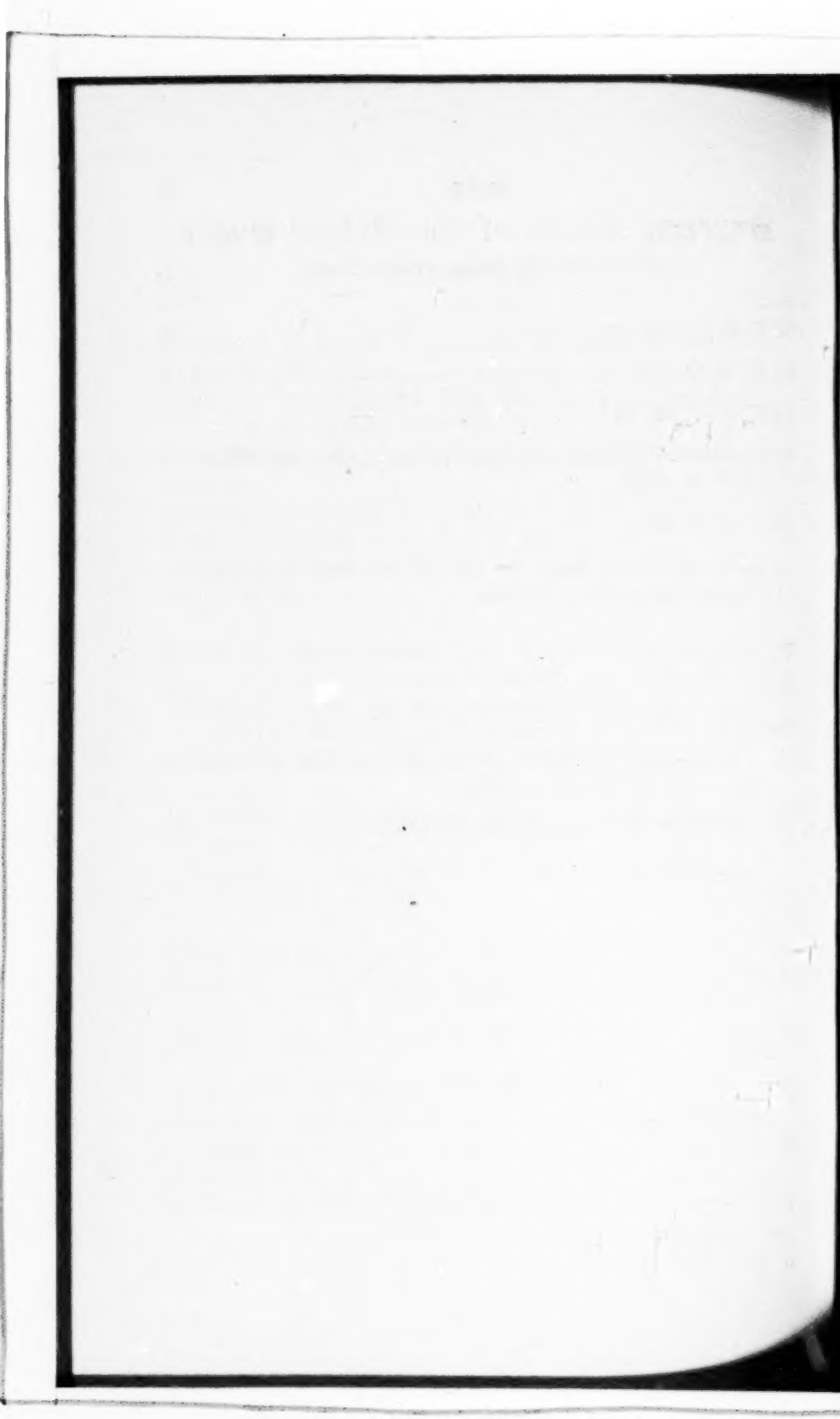
## STATUTES AND REGULATIONS CITED

	PAGE
38 U. S. C. 802 (g) .....	10
38 U. S. C. 808 .....	10, 13
28 U. S. C. 347 (a) .....	5, 9
Regulation of Veterans Administration, Oct. 16, 1942, 7 F. R. 8363 .....	6, 10, 13
28 U. S. C. 350 .....	5
10 U. S. C. 903, 41 Stat. 367, 903 M. L. 1939, Sec. 862, Army Regulation 35-1540 .....	11

## MISCELLANEOUS

Personal Affairs of Military Personnel and Aid for  
Their Dependents, January 1, 1943 (United States  
Government Printing Office):

Section VI—Six Months Death Gratuity .....	12
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JUNE TERM 1948

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CLARA SHAPIRO

Petitioner,

*against*

ANNETTE SHAPIRO and UNITED STATES OF AMERICA,

Respondents.

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**PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE SECOND CIRCUIT.**

TO THE HONORABLE THE CHIEF JUSTICE OF THE UNITED  
STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME  
COURT OF THE UNITED STATES:

Your petitioner, Clara Shapiro, respectfully shows to  
this Court as follows:

**I.**

**Summary statement of matter involved.**

This action involves the benefits of a \$10,000 National  
Service Life Insurance Policy issued to Jerry Shapiro.

On February 22, 1944, Jerry Shapiro died in a con-  
flagration at Camp Pickett, Virginia, while serving as a  
commissioned officer in the United States Army. He was  
single when inducted into the armed forces February 26,  
1941 and married respondent, Annette Shapiro, October  
3, 1942.

Jerry Shapiro applied for and was issued the policy, effective March 1, 1942, naming his mother, petitioner herein, as beneficiary thereof. The policy was in full force and effect at the time of his death.

Claim was made and filed by respondent Annette Shapiro with the Veterans' Administration for payment of the benefits under the policy upon the claim that a change of beneficiary of the policy in her favor was effected by the deceased officer at Fort McClellan, Alabama, between December 18, 1942 and February 22, 1943.

No record of such change of beneficiary was found in the Veterans' Administration and for the purpose of settlement of the insurance, the Veterans' Administration on June 14, 1944 requested the War Department furnish them photostatic copies of all beneficiary designations by the deceased officer, including War Department, Adjutant General's Office Form 41, confidential information and data sheet, etc. Responding to this request, the War Department under date of July 1, 1944 advised the Veterans' Administration that no information was available concerning any designation of beneficiary for insurance, but enclosed a photostat of a W. D., A. G. O. Form 41 of the deceased officer filed in its records.

Form 41 of the War Department, Adjutant General's Office, related to six months gratuity pay under pertinent Army Regulations and not to insurance.

## II.

### **Award of Veterans' Administration.**

In disposing of the conflicting claims of the widow and mother, the Veterans' Administration held:

"There are in the claims folders affidavits of two fellow officers of the insured to the effect that he ad-



vised them that he had changed the beneficiary of his National Service Life Insurance from his mother to his wife, Annette Shapiro, an affidavit from another officer, First Lieutenant John H. Riml, Jr., that during the month of February, 1943, he personally saw the late Second Lieutenant Jerry Shapiro make an application for \$10,000 National Service Life Insurance policy in favor of his wife, Annette, while both he and assured were stationed at Fort McClellan, Alabama, and still another affidavit from a Fourth Force, Captain Charles E. Dunn, to the best of his recollection that Second Lieutenant Jerry Shapiro at the time of his transfer from their organization to the Battalion IRTC, changed the beneficiary form designating his wife beneficiary on the basis of the National Service Life Insurance that was already in effect. It is the opinion of this office, however, that these affidavits are insufficient to definitely establish that Form 41 executed by the assured on December 19, 1942, was intended to effect a change of beneficiary of his National Service Life Insurance, and this office accordingly concurs in the recommendation of the Assistant Administrator to the effect that the claim of the widow, Annette Shapiro, be disallowed, and the claim of the mother, Clara Shapiro, be allowed."

Based upon such rejection of her claim, respondent brought this action to have herself declared beneficiary under the policy, alleging:

"That prior to his death the said Jerry Shapiro executed, and that subsequent to his said marriage with plaintiff he executed and duly filed with the proper authorities for that purpose, a written designation of the plaintiff as the beneficiary under the said contract of insurance; and that subsequent to the designating of the plaintiff as such beneficiary no other, or substitute beneficiary thereunder was designated by the said Jerry Shapiro" (R. 6).

## III.

**The evidence.**

Respondent Annette Shapiro was permitted to testify over objection that at Fort McClellan in December, 1942 the assured declared to her that he had changed his insurance policy over to her name (R. 22). She admitted that subsequently while still in Virginia the deceased officer wanted to take out insurance for her (R. 22). Charles E. Dunn, a first lieutenant assigned as adjutant to the 7th Battalion I. R. T. C. in December, 1942, to whom the assured reported for duty, testified that the assured told him he had recently married and wanted to change the beneficiary of his insurance from his mother to his wife. Lieutenant Dunn was very busy and told the assured to come back later (R. 44, 45). A day or two later, he states, the assured returned, and repeated his request. *Lieutenant Dunn did not supply the W. D., A. G. O., Form 41 executed by the assured, Plaintiff's Exhibit 2* (R. 82, 83) *and did not know whether the assured requested a form for designation of beneficiary of six months' gratuity pay from the clerk who gave him the form* (R. 48). The assured executed the designation of beneficiary for gratuity pay and gave the same to the sergeant major for forwarding through the message center to its proper destination (R. 45, 46, 47). Another officer testified that in the early part of 1944 the assured on two occasions stated he had changed the beneficiary of his insurance (R. 57, 58).

Petitioner testified to a conversation had with her son on the occasion of his last furlough at home on Christmas, 1943, at which time he indicated concern for her welfare and assured her of the benefits of his insurance in the event of his death (R. 76, 77, 78). Petitioner's testimony was corroborated (R. 39).

No direction for change of beneficiary was ever filed with the Veterans' Administration, the War Department merely forwarding a *photostat* of the W. D., A. G. O Form 41 to the Veterans' Administration upon its request after death (R. 87).

#### IV.

##### **Decision of Trial Court.**

The trial court held that the execution by the deceased officer of the W. D., A. G. O. Form 41 constituted an effective change of beneficiary of the National Service Life Insurance from the mother to the wife. The opinion of the learned trial court is printed in the Transcript of Record (R. 100-106).

#### V.

##### **Decision of Circuit Court of Appeals.**

The Circuit Court of Appeals for the Second Circuit affirmed the judgment in favor of respondent Annette Shapiro on March 4, 1948. The opinion of the Circuit Court of Appeals (166 F. 2d 24) appears in the Transcript of the Record herein (R. 116-122).

#### VI.

##### **Jurisdiction of this Court to review the judgment.**

The jurisdiction of this Court is invoked under Title 28, U. S. C., Sec. 347(a), providing that in any case in a circuit court of appeals, it shall be competent for the Supreme Court of the United States, upon proper petition, to issue the writ of certiorari.

The petition for writ of certiorari has been filed prior to the expiration of three months from the date of the decision and judgment of the Circuit Court of Appeals, as required by Title 28, U. S. C., Sec. 350 (R. 123).

## VII.

### **The question presented.**

The sole question presented is whether a change of beneficiary of a National Service Life Insurance Policy may be effected by filing with the War Department a designation of beneficiary of gratuity pay benefits payable in case of death, and without execution or filing with the Veterans' Administration of any change of beneficiary of the insurance.

## VIII.

### **Reasons relied on for allowance of the writ.**

There are many thousands of these National Service Life Insurance Policies now held and which will be continued in force by citizens formerly soldiers in the service of their country. The Veterans' Administration has promulgated regulations, looking toward creation of a rule by which it could readily be ascertained whether in a given case a change of beneficiary has been effected. The regulation of the Veterans' Administration (Oct. 16, 1942, 7 F. R. 8363) relative to beneficiary changes is reasonable. It merely requires that a notice in writing signed by the insured shall be forwarded to the Veterans' Administration, the administrative agency. It guards against uncertainty in the payment of insurance benefits. The holders of these policies as well as the Veterans' Administration are entitled to have a clear cut decision and announcement of the rule to be followed in view of this regulation.

An important question of Federal Law has been incorrectly decided by the Circuit Court of Appeals for the Second Circuit. To allow the decision to stand will not

only work an injustice in the present case, but will cause great confusion in the many similar insurance policies all over the nation and will permit claims of change of beneficiary to be asserted on all sorts of oral testimony, much of which cannot be combatted by the beneficiaries of record.

The decision rendered by the Circuit Court of Appeals is in conflict with the decision of the majority of the Circuit Court of Appeals for the Tenth Circuit in the case of *Bradley v. U. S.*, 143 F. (2d) 573, certiorari denied 331 U. S. 793, as well as with other authorities.

The decision of the Circuit Court of Appeals herein on the question herein mentioned has so far departed from the accepted rules of law as to call for the exercise of this Court's power of supervision.

## IX.

### Record.

Copies of the Transcript of Record in this case in the Circuit Court of Appeals for the Second Circuit are filed herewith in conformity with Rule 38 of this Honorable Court.

## X.

### Prayer.

Wherefore, petitioner prays that a writ of certiorari issue to the Circuit Court of Appeals for the Second Circuit requiring said Court to certify and send to this Court a full and complete Transcript of the Record and all proceedings of said Circuit Court had on the cause numbered and entitled on its docket, No. 34-345, Annette Shapiro, plaintiff-appellee v. United States of America, defendant,

and Clara Shapiro, impleaded defendant-appellant, to the end that the said case may be reviewed and determined by this Court, as provided by the statutes of the United States, and that the judgment of the United States Circuit Court of Appeals in said case be reviewed by this Court, and for such other relief as to the Court seems proper.

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EDWARD NORWALK,  
233 Broadway, N. Y. 7, N. Y.  
Counsel for Petitioner.

May, 1948.

# **BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.**

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## **I.**

### **The opinion of the court below.**

This petitioner prays for a review of the decision and judgment entered on March 4, 1948, by the Circuit Court of Appeals, Second Circuit, in the case of Annette Shapiro, plaintiff-appellee, v. United States of America, defendant, and Clara Shapiro, impleaded defendant-appellant, No. 34-345. The opinion of the Circuit Court of Appeals (166 F. 2d 240), appears in the Transcript of the Record herein (R. 116-122).

## **II.**

### **Jurisdiction.**

Jurisdiction is invoked under Title 28, U. S. C. 347 (a).

## **III.**

### **Statement of the case.**

The nature of the case, the facts therein and the ruling of the Circuit Court of Appeals for the Second Circuit have already been set forth in the foregoing petition for the writ of certiorari, which is adopted as a part of this supporting brief.

## **IV.**

### **Reasons relied on for allowance of writ.**

Same are set out in the petition for the writ herein, pages 6-7 and for brevity are not repeated here.

## V.

**Statutes and regulations.**

38 U. S. C. 802 (g):

“The insured shall have the right to designate the beneficiary or beneficiaries of the insurance, but only within the classes herein provided, and shall, *subject to regulations*, at all times have the right to change the beneficiary or beneficiaries of such insurance without the consent of such beneficiary or beneficiaries.  
• • •” (Emphasis ours.)

38 U. S. C. 808:

“The Administrator, subject to the general direction of the President, shall administer, execute, and enforce the provisions of this chapter, shall have power to make such rules and regulations, not inconsistent with the provisions of this chapter, as are necessary or appropriate to carry out its purposes, and shall decide all questions arising hereunder.”

Regulation of Veterans Administration Oct. 16, 1942,  
7 F. R. 8363.

“The beneficiary shall have the right at any time, and from time to time, and without the knowledge or consent of the beneficiary to cancel the beneficiary designation, or to change the beneficiary. • • • A change of beneficiary to be effective *must be made by notice in writing* signed by the insured *and forwarded to the Veterans' Administration* by the insured or his agent and must contain sufficient information to identify the insured.” (Emphasis ours.)



## VI.

**Argument.**

The policy named the assured's mother, the petitioner, as beneficiary thereof and the mother was therefore presumptively entitled to the proceeds and the burden rested upon plaintiff claiming as a substituted beneficiary to show that the insured during his lifetime effected a valid change of beneficiary from his mother to her. *Leahy v. United States*, 9 Cir., 15 F. 2d 949; *Cf. Zolintakis v. Orfamos*, 10 Cir., 119 F. 2d 571; *Brown v. Union Central Life Ins. Co.*, Tex Civ. App. 72 S. W. 2d 661; *In re Burton's Estate*, 116 Pa. Super. 249, 176 A. 819; *Kochanek v. Prudential Ins. Co. of America*, 262 Mass. 174, 159 N. E. 520.

Plaintiff failed to show a positive and unequivocal act on the part of the insured designed to effectuate a change of beneficiary of his insurance from his mother to her. Plaintiff's case clearly rested upon the efficacy of the War Department, Adjutant General's Office, Form 41, executed by the insured officer Dec. 19, 1942 at Fort McClellan, to change the beneficiary of his insurance from his mother to herself.

This War Department form was prescribed for and related solely to certain gratuity pay (41 Stat. 367, 10 U. S. C. 903, M. L. 1939, sec. 862, Army Regulation '35-1540).

The War Department and Army Regulations pertinent to gratuity pay benefits covered by the War Department Adjutant General's Office form 41, executed by the deceased, is contained in Pamphlets of the War Department entitled *Personal Affairs of Military Personnel and Their Dependents*, October 20, 1942, and *Personal Affairs of Military Personnel and Aid for Their Dependents*,

January 1, 1943 (United States Government Printing Office). Section VI of the latter is entitled "Six Months Death Gratuity" and provides:

"36. To whom payable—a. Immediately upon official notification of the death \* \* \* of any officer \* \* \* in the active service in the Army of the United States, the Chief of Finance, U. S. Army, will cause to be paid \* \* \* an amount equal to 6 months' pay at the rate received by such officer \* \* \* at the time of his death.

. . . . .

"c. If at the time of death no widow or unmarried child or children under the age of 21 survives, then the gratuity will not be paid unless a dependent relative has been designated as beneficiary. Any married child, or unmarried child over 21, designated as such on W. D., A. G. O. Form 41 (officers) or W. D., A. G. O. Form No. 22 (Enlistment Record) in order to receive payment."

The W. D., A. G. O. Form 41 filled out and duly executed by the deceased officer was designed to and effectively did designate plaintiff as the beneficiary of his gratuity pay. It in no wise related to or pertained to any life insurance. Its very context is inconsistent with the right and privilege of an assured to designate a particular beneficiary in accordance with his wishes. The form indicates a prescribed beneficiary whose name and address must be inserted in line 1, to wit, the wife, and requires an affirmative statement if no wife, or if she is deceased or divorced. A statement of a somewhat similar nature is required to be made relative to children on line 2. It is only after such designations have been made, or it is made to affirmatively appear that such designations could not in fact be made, that any choice of designation is afforded, and even then the form specifically states that the beneficiaries there

designated shall take in the event that the widow and children first designated shall have died or be disqualified before payment is made. Such restrictions are entirely foreign to the right and privilege of an insured to name or designate a beneficiary of his life insurance policy. The deceased was an officer, a graduate of Officers' Candidate School. He was not a menial or subordinate cowed by the presence of austere authority. The form appears to have been filled in by the insured himself aptly in exact accordance with its particular directions, clearly indicative of complete understanding. It was not executed on the battlefield, but clearly appears to be the carefully considered and deliberate act of a responsible officer. It was duly filed in usual course with the appropriate authority, the War Department, Adjutant General's Office. In these circumstances, it cannot be said that the insured not only expressed his intention to change the beneficiary of his insurance policy, but also set in motion the machinery devised by the United States to accomplish the desired result. *Roberts v. United States*, C. C. A. 4th Cir., 157 F. 2d 906, 909.

The machinery devised by the United States for the accomplishment of a change of beneficiary of National Service Life Insurance consists in the notice prescribed by the duly designated administrative agency, the Veterans' Administration (38 U. S. C. 808), and its duly promulgated regulation (7 F. R. 8363). As was so well stated by Judge Murrah in *Bradley v. United States*, 143 F. 2d 573, 576, cert. den. 331 U. S. 859.

"The manifest purpose of the foregoing regulation is to create a legal standard for the orderly administration of the Act by providing a means and method for the exercise of the statutory right of the insured to change the beneficiary of his insurance and to protect the insurer against conflicting claims for the proceeds of the policy (citing authorities)."

In the case at bar, no such notice as is prescribed by the applicable regulation was ever filed with the Veterans' Administration. There is absolutely nothing in the gratuity pay beneficiary form from which it can be legitimately inferred that it was for the use and information of the Veterans' Administration, or that its purpose was to effect a change of beneficiary of the deceased officer's life insurance. The Veterans' Administration was an entire stranger to the document, and did not receive it or have knowledge of its execution until after the death of the insured, and a photostatic copy thereof was forwarded to the Administration upon its request. The alleged notice fails of achieving a change of beneficiary of the deceased officer's life insurance not for want of a ministerial or perfunctory act, which concededly may be supplied, but rather because it may not in law constitute any act designed or calculated to comply with the prescribed regulation. It is well established that intention alone, no matter how clear and persuasive, is insufficient (*Collins v. United States*, 161 F. 2d 64, cert. den. 331 U. S. 859, *Ramsy v. United States*, 72 F. Supp. 613, *Bradley v. United States*, *supra*).

To effectuate a change of beneficiary of National Service Life Insurance, in addition to an expressed intention, there must be a substantial compliance with the applicable regulations of the Veterans' Administration evidenced by positive and unequivocal acts on the part of the insured designed to effectuate such intentions. *Kaschefskey v. Kaschefskey*, 6 Cir. 110 F. 2d 836, *Johnson v. White*, 8 Cir. 39 F. 2d 793, *Peart v. Chaze*, D. C., 13 F. 2d 908, *Claffy v. Forbes*, D. C., 280 F. 233, *Farley v. United States*, D. C., 291 F. 238. The converse is equally true (*Kingston v. Hines*, D. C., 13 F. 2d 406; *Gifford v. United States*, D. C., 289 F. 833; *Chichiarellie v. United States*, D. C., 26 F. 2d 484; *Layne v. United States*, 7 Cir., 3 F. 2d 431; *Leahy v. United States*, 9 Cir., 15 F. 2d 949. This

rule and distinction is clearly set forth by Judge Murrah in the Bradley case. In principle, if not entirely on all the facts, the case at bar is indistinguishable from the Bradley case.

We maintain that precisely because the learned Circuit Court of Appeals for the Second Circuit failed to appreciate this distinction made by the court in the Bradley case, the learned Circuit Court was compelled to the conclusion that the cases on beneficiary change could only be dealt with on the basis of whether the evidence in the particular case showed that the insured had performed an act with intent to change his beneficiary, and that if the Bradley decision be thought to differ the conclusion reached in the dissenting opinion of Judge Phillips in the Bradley case accords with their own view. Obviously, such conflict and confusion in the enunciation and application of a rule of law applicable to National Service Life Insurance must evoke a clear cut announcement by this Honorable Court of the correct rule and law to be followed.

### **CONCLUSION.**

**The writ of certiorari should be granted.**

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